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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 GERALD E. VONTOBEL,

10 Petitioner,

11 vs.

12 JAMES BENEDETTI, et al.,

13 Respondents.
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Case No. 3:10-CV-00073-LRH-(VPC)

ORDER

15 The court determined that grounds 2, 3, and 6 of the first amended petition (#23) were not
16 exhausted. Order (#42). Petitioner has filed a motion for issuance of stay and abeyance order (#45).
17 Respondents have not filed a response to the motion. To stay this action, petitioner must show that
18 he has “good cause for his failure to exhaust, his unexhausted claims are potentially meritorious,
19 and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.”
20 Rhines v. Weber, 544 U.S. 269, 278 (2005).

21 The court found that ground 2 was unexhausted because petitioner did not allege any facts in
22 support of his corresponding state-court petition. The court found that grounds 3 and 6 were
23 unexhausted because petitioner did not inform the Nevada Supreme Court on direct appeal that
24 these grounds were issues of federal law. Petitioner has demonstrated good cause to excuse the
25 failure to exhaust these grounds in state court, and the grounds have potential merit.

26 IT IS THEREFORE ORDERED that petitioner’s motion for issuance of stay and abeyance
27 order (#45) is **GRANTED**.
28

1 IT IS FURTHER ORDERED that this action is **STAYED** pending exhaustion of the
2 unexhausted claims. Petitioner shall return to this court with a motion to reopen within sixty (60)
3 days of issuance of the remittitur by the Nevada Supreme Court at the conclusion of the state court
4 proceedings. Further, petitioner or respondents otherwise may move to reopen the matter and seek
5 any relief appropriate under the circumstances.

6 IT FURTHER IS ORDERED that the clerk of court shall administratively close this action
7 until such time as the court grants a motion to reopen the matter.

8 DATED this 4th day of April, 2012.



11 LARRY R. HICKS
12 UNITED STATES DISTRICT JUDGE
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